

HOUSE BILL No. 1430

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-10.

Synopsis: Port commission. Provides that the Indiana port commission is a governmental entity subject to the Indiana tort claims act. Provides that a tenant, lessee, licensee, or other person has no claim in state property in a state port or port project unless the port commission enters an agreement specifying the conditions for the interest and a legal description of the property.

Effective: July 1, 1999.

Bottorff

January 12, 1999, read first time and referred to Committee on Judiciary.

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First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1430

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 8-10-1-3 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) There is hereby created a
3 commission to be known as the "Indiana port commission" and by that
4 name the commission may sue and be sued, and plead and be
5 impleaded. The commission hereby created is a body both corporate
6 and politic in the state of Indiana, and the exercise by the commission
7 of the powers conferred by this chapter in the construction, operation
8 and maintenance of a port project shall be deemed and held to be
9 essential governmental functions of the state. ~~but the commission shall~~
10 ~~not however be immune from liability by reason thereof. The~~
11 **commission is a governmental entity subject to IC 34-13-3.**

12 (b) The commission shall consist of seven (7) members, appointed
13 by the governor, no more than four (4) of whom shall be members of
14 the same political party. The members shall be residents of the state,
15 and shall have been qualified electors therein for a period of at least
16 five (5) years next preceding their appointment. The members of the
17 commission first appointed shall continue in office for terms expiring,



in the case of two (2) members, on July 1, 1962, and in the case of three (3) members, on July 1, 1963, July 1, 1964, and July 1, 1965, and the first two (2) members appointed after January 1, 1975, shall continue in office for terms expiring July 1, 1977, for one (1) member and July 1, 1979, for the other member, respectively, and until their respective successors shall be duly appointed and qualified. The term of any member of the commission first appointed shall be designated by the governor. The successor of each such member shall be appointed for a term of four (4) years, except that any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term, and a member of the commission shall be eligible for reappointment. The governor may at any time remove any member of the commission for misfeasance, nonfeasance, or malfeasance in office. The members of the commission shall, within ten (10) days after their appointment, meet and qualify by subscribing an oath to discharge honestly and faithfully the duties of their office as members of such commission. The commission shall thereafter elect one (1) of the members as chairman and another as vice-chairman, and shall appoint a secretary-treasurer who need not be a member of the commission. Four (4) members of the commission shall constitute a quorum and the affirmative vote of four (4) members shall be necessary for any official action taken by the commission. No vacancy in the membership of the commission shall impair the rights of a quorum to exercise all the rights and perform all the duties of the commission.

(c) Before the issuance of any port revenue bonds under the provisions of this chapter, each appointed member of the commission shall give a surety bond to the state in the penal sum of twenty-five thousand dollars (\$25,000), and the secretary-treasurer shall give a surety bond to the state in the penal sum of fifty thousand dollars (\$50,000). Each such surety bond ~~to~~ **must** be conditioned upon the faithful performance of the duties of the office, ~~to~~ be executed by a surety company authorized to transact business in the state as surety, and ~~to~~ be approved by the governor and filed in the office of the secretary of state.

(d) Each appointed member of the commission shall receive an annual salary of seven thousand, five hundred dollars (\$7,500), payable in monthly ~~instalments~~ **installments**. However, no members of such commission as appointed hereunder shall receive any salary except a per diem as fixed and approved by the budget director until said commission is able to carry on the full operations as intended by this chapter, and the budget director, subject to the approval of the governor of the state of Indiana, shall determine when said salaries for said



commission members shall commence.

(e) The governor shall, however, appoint said members as herein provided within a period of sixty (60) days following the effective date of this chapter.

(f) Each member shall be reimbursed for ~~his~~ **the** actual expenses necessarily incurred in the performance of ~~his~~ **the member's** duties.

(g) All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the authority of this chapter and no liability or obligation shall be incurred by the commission hereunder beyond the extent to which moneys shall have been provided under the authority of this chapter.

SECTION 2. IC 8-10-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. If the commission shall find it necessary to change the location of any portion of any public road, **highway**, railroad, or public utility facility, it shall cause the same to be reconstructed at such location as the division of government having jurisdiction over such road, highway, railroad, or public utility facility shall deem most favorable and of substantially the same type and in as good condition as the original road, highway, ~~or~~ railroad, or public utility facility. The cost of such reconstruction, relocation, or removal and any damage incurred in changing the location of any such road, highway, railroad, or public utility facility, shall be ascertained and paid by the commission as a part of the cost of such port or port project. The commission shall have authority to petition the circuit court of the county wherein is situated any public road or part thereof, affected by the location therein of any port or port project, for the vacation or relocation of such road or any part thereof with the same force and effect as statutes in effect on March 2, 1961, to the inhabitants of any municipality or governmental subdivision of the state. The proceedings upon such petition, whether it be for the appointment of appraisers or otherwise, shall be the same as provided by statutes in effect on March 2, 1961, for similar proceedings upon such petitions. In addition to the foregoing powers, the commission and its authorized agents and employees, after proper notice, may enter upon any lands, waters, and premises in the state for the purpose of making surveys, soundings, drillings, and examinations as are necessary or proper for the purposes of this chapter, and such entry shall not be deemed a trespass, nor shall an entry for such purpose be deemed an entry under any condemnation proceedings which may be then pending; provided, that before entering upon the premises of any railroad, notice shall be given to the superintendent of such railroad involved at least five (5) days in advance of such entry, and provided, that no survey, sounding, drilling,



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and examination shall be made between the rails, or so close to a railroad track, as would render said track unusable. ~~The commission shall make reimbursement for any actual damage resulting to such lands, waters, and premises and to private property located in, on, along, over, or under such lands, waters and premises, as a result of such activities.~~ The state of Indiana, subject to the approval of the governor, hereby consents to the use of lands owned by it, including lands lying under water and riparian rights, which are necessary or proper for the construction or operation of any port or port project, provided adequate compensation is made for such use. The commission shall also have power to make reasonable regulations for the installation, construction, maintenance, repair, renewal, relocation, and removal of tracks, pipes, mains, conduits, cables, wires, towers, poles, and other equipment and appliances (referred to in this section as "public utility facilities") of any public utility in, on, along, over, or under any port or port project. Whenever the commission shall determine that it is necessary that any such public utility facilities which are, on or after March 2, 1961, located in, on, along, over, or under any such port or port project should be relocated or should be removed from such port or port project, the public utility owning or operating such facilities shall relocate or remove the same in accordance with the order of the commission. ~~provided,~~ However, ~~that~~ the cost and expenses of such relocation or removal including the cost of installing such facilities in a new location or new locations, and the cost of any lands, or any rights or interests in lands, and any other rights, acquired to accomplish such relocation or removal, shall be ascertained and paid by the commission as a part of the cost of such port or port project, excepting, however, cases in which such equipment or facilities are located within the limits of highways or public thoroughfares being constructed, reconstructed, or improved under the provisions of this chapter. In case of any such relocation or removal of facilities, the public utility owning or operating the same, its successors or assigns, may maintain and operate such facilities, with the necessary appurtenances, in the new location or new locations, for as long a period, and upon the same terms and conditions, as it had the right to maintain and operate such facilities in their former location or locations subject, however, to the state's right of regulation under its police powers.

SECTION 3. IC 8-10-1-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. (a) The commission is hereby authorized and empowered to acquire by purchase whenever it shall deem such purchase expedient, any land, property, rights,



right-of-ways, franchises, easements, and other interests in lands, including lands under water and riparian rights, as it may deem necessary or convenient for the construction and operation of any port or port project, upon such terms and at such price as may be considered by it to be reasonable and can be agreed upon between the commission and the owner thereof, and to take title thereto in the name of the state.

(b) The commission is hereby further authorized and empowered to sell, transfer, and convey any such land or any interest therein so acquired, or any portion thereof, when the same shall no longer be needed for such purposes. ~~and it~~ **The commission** is further authorized and empowered to transfer and convey any such lands or interest therein as may be necessary or convenient for the construction and operation of any port or port project, or as otherwise required under the provisions of this chapter. ~~Provided, That~~ **However**, no such sale shall be made without **first obtaining** the approval of the governor ~~first obtained~~ and at not less than the appraised value established by three (3) independent appraisers appointed by the governor. The commission shall be authorized to restrict the use of any land so sold by it and provide for a reversion to the commission in the event the land shall not be used for the purpose represented by the purchaser, and such restrictions and reversions shall be set out in appropriate covenants in the deeds of conveyance, which deeds shall be subject to the approval of the governor.

(c) The commission shall also be authorized to lease, or grant options to lease, to others for development any portion of the land owned by the commission, on such terms as the commission shall determine to be advantageous. All such leases or options to lease which ~~leases~~ cover a period of more than four (4) years shall be subject to the approval of the governor. Leases of lands under the jurisdiction or control of the commission shall be made only for such uses and purposes as are calculated to contribute to the growth and development of the port and terminal facilities under the jurisdiction or control of the commission. In the event, the commission shall lease to others a building or structure financed by the issuance of revenue bonds. The rental shall be in an amount at least sufficient to pay the interest on and principal of the amount of such bonds representing the cost of such building or structure to the extent such interest and principal is payable during the term of the lease, as well as to pay the cost of maintenance, repair, and insurance for such building and a reasonable portion of the commission's administrative expense incurred during the term of the lease which is allocable to such building or structure.

(d) **A tenant, lessee, licensee, or other person has no right, claim,**



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1 title, or interest in state property included in a port or port project
 2 unless an agreement entered into by the commission provides:

3 (1) all of the conditions under which the right, claim, title, or
 4 interest is granted; and

5 (2) a legal description of the specific property.

6 SECTION 4. IC 8-10-1-20 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 20. Each port or port
 8 project, as defined in section 2 of this chapter, when constructed and
 9 opened to traffic shall be maintained and kept in good condition and
 10 repair by the commission. Each such project shall also be policed and
 11 operated by such force of police, tolltakers, and other operating
 12 employees as the commission may in its discretion employ. ~~All public~~
 13 ~~or private property damaged or destroyed in carrying out the powers~~
 14 ~~granted by this chapter shall be restored or repaired and placed in its~~
 15 ~~original condition as nearly as practicable or adequate compensation~~
 16 ~~made therefor out of funds provided under the authority of this chapter.~~

17 SECTION 5. IC 8-10-2-1 IS AMENDED TO READ AS FOLLOWS
 18 [EFFECTIVE JULY 1, 1999]: Sec. 1. In addition to the powers
 19 conferred upon the Indiana port commission by other provisions of this
 20 article, the commission, in order to promote the agricultural, industrial,
 21 and commercial development of the state or to provide for the general
 22 welfare, and in order to connect any port under its jurisdiction with any
 23 other waterway or as part of a plan to ultimately connect such port with
 24 any other waterway, shall have the power and is hereby authorized, in
 25 cooperation with the federal government or otherwise, to construct a
 26 new canal or canals or to improve any canal, river, or other waterway,
 27 or both, including but not limited to dredging and all other work
 28 required in the design and construction of shipping channels, canals,
 29 and turning basins in a manner to accommodate water-borne
 30 transportation and the construction of wharves, docks, piers,
 31 warehouses, and other facilities for the unloading of barges and other
 32 boats. In exercising the powers hereby granted, the commission shall
 33 have only such powers granted to it by this article in connection with
 34 a port project as may relate to the construction of a new canal or canals
 35 or the improvement of any canal, river, or other waterway, or both, and
 36 the term "port project", as used in this article, shall be deemed to
 37 include the construction of a new canal or canals or the improvement
 38 of any canal, river, or other waterway, or both, including but not limited
 39 to dredging and all other work required in the design and construction
 40 of wharves, docks, piers, warehouses, and other facilities for the
 41 unloading of barges and other boats. ~~provided, however, that the~~
 42 ~~commission shall make reimbursement for any actual damage to any~~



public or private facilities, including but not limited to breakwaters, water intakes, wharfs, piers, boat docks, warehouses, and pipeline equipment resulting from such construction and other activities. Nothing in this section shall authorize the Indiana port commission to take, condemn, or disturb any property right or interest in property, existing on March 10, 1967, including permits and authorities to fill and reclaim submerged lands, or any facilities constituting all or part of any operating property or any private or public port.

SECTION 6. IC 8-10-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) In addition to the powers conferred upon the Indiana port commission by other provisions of this article, the commission, whenever it finds that the economic welfare of the state would thereby be benefited, by additional employment opportunities, or by additional diversification of industry within the state, or by increased income or prosperity to the state and its residents, or for any other reason, shall have the power to acquire, construct, maintain, repair, police, and lease to others such facilities for manufacturing, storage, or processing of goods, or for the carrying on of commercial, business, or recreational activities as the commission further finds will increase the water-borne traffic into or out of the port. Any such facilities and the site thereof shall not be exempt from property taxation, and the lessee in any lease thereof shall agree to pay all property taxes levied on such facilities and the site thereof.

(b) In exercising the powers granted in this section, the commission shall have all the powers granted to it by this article, in connection with a port project, and the term "port project", as used in IC 8-10-1, shall be deemed to include facilities, adjuncts, and appurtenances of the character referred to in this section.

(c) It is further declared that the acquisition, construction, maintenance, repair, policing of, and leasing to others of such facilities under the conditions set forth in this section is a public purpose.

(d) Nothing in this section shall authorize the Indiana port commission to take, condemn, or disturb any property right or interest in property, existing on March 10, 1967, including permits and authorities to fill and reclaim submerged lands, or any facilities constituting all or part of any operating property or any private or public port. ~~The Indiana port commission shall make reimbursement for any actual damage to any public or private facilities, including but not limited to breakwaters, water intakes, wharves, piers, boat docks, warehouses, and pipeline equipment resulting from the exercise by it of any powers granted to it by this section.~~

